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C O N F I D E N T I A L SECTION 01 OF 05 KYIV 002247

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TAGS: [PGOV](#) [PREL](#) [PINR](#) [UP](#)  
SUBJECT: UKRAINE: EVEN SMALL ELECTION ABUSES COULD  
INFLUENCE OUTCOME OF SEPTEMBER VOTE

REF: A. KYIV 001722

- [1](#)B. KYIV 002125
- [1](#)C. KYIV 01808
- [1](#)D. KYIV 02239
- [1](#)E. KYIV 02202
- [1](#)F. KYIV 02206
- [1](#)G. KYIV 01986

Classified By: Ambassador for reasons 1.4(b,d).

[1](#)1. Summary. As the campaign heats up for Ukraine's September 30 preterm parliamentary elections, few anticipate there will be massive election fraud. However, in what is expected to be a very tight race, even abuses on the margins could influence the outcome. Greater transparency in the election system, increased domestic and international scrutiny, and the high stakes if a leader is caught engaged in fraud make large amounts of falsification unlikely. So far the tone of the campaign has been restrained and the highly-politicized Central Election Commission (CEC) has managed to move forward in making the necessary preparations for the vote. The prevailing sentiment in Kyiv now is that the election will not be nearly as bad as 2004, but that both through disorganization and, in some cases, by intent, it could be worse than the March 2006 elections, which were hailed as the best in Ukraine's history.

[1](#)2. (C) Polls and local political analysts suggest that BYuT and OU-PSD on the one hand and Regions and the Communists on the other are roughly tied meaning that an advantage of one to two percent of the vote could alter seat allocations in the new Rada, and affect the formation of the future government coalition. All forces are drawing on administrative resources to support their campaigns (albeit perhaps less than in the past); the Prime Minister and President's teams are using national-level resources, but all forces have local government power to bring to bear in different regions. Beyond this, abuse and influence are likely to appear in a number of forms -- among these, the invalidation of the results of certain polling stations to lower a specific party's national rating, abusing the mobile ballot box, and sponsoring minor parties to strip votes from competitors. We expect some vote manipulation by the major parties will be intended to keep the vote for peripheral parties under the 3% threshold for entering the Rada, as was alleged in 2006, by Vitrenko's Progressive Socialists (PSPU), Pora-PRP, and the Kostenko-Plyushch Bloc. Disenfranchisement of voters is also likely due to new articles in the election law requiring the Border Guards to update voter lists as citizens leave the country and the decision to eliminate absentee ballots; changes that CEC Chairman Shapoval told the Ambassador were intentional and problematic. Finally, all sides appear to be preparing post-election court challenges and seeking favorable judges to issue preferred rulings -- these court challenges could slow the seating of the Rada and

the formation of a new government.

13. (C) In the end, the Party of Regions probably has a slight advantage in its ability to abuse the system because it has more experience successfully doing so, has more money at its disposal, is more organized, and heavily dominates in the East and South, which gives it freer reign to act. Regions will mostly be monitored in the east by the Communists and Vitrenko, where the Communists may be complicit. In contrast, BYuT and OU will serve as a check on each other's shenanigans in the west and center, given the high level of competition between the two for their shared electorate. There is likely to be no major party inclined to care if PSPU, or any other smaller party, complains after the election that it was cheated out of seats. To promote elections as clean as 2006, we are vigilantly reminding all sides that a bad election will harm Ukraine's standing in the democratic community and could give critics in Europe further fuel to argue that Ukraine is not ready for the EU. End summary and comment.

#### Few Votes Up For Grabs

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14. (C) Political analysts and observers, both in Kyiv and in the oblasts, have told us that they expect the vote distribution between the three main parties to be roughly similar to 2006, with the Communists also making it over the three-percent barrier. The possibility remains that a fifth party will make it; for example, Head of the International Democracy Institute Serhiy Taran told us that he believed Lytvyn had a shot. This leaves only 5-10% of voters up for grabs, including some undecideds and much of the Socialist electorate, which Taran believed will split between Lutsenko and Regions.

KYIV 00002247 002 OF 005

15. (C) Because the vote will be so close, the difference of a few percentage points could still make a difference in seat allocation in the new Rada. With no party likely to get an outright majority alone, they will all be calculating how many seats they need to have the upper hand in coalition negotiations. Head of Committee of Voters of Ukraine Ihor Popov, who usually tends to be pessimistic, was confident that there was enough transparency in the voting system now to stop massive efforts to falsify the vote; he expected at most 1% of the vote could be falsified. However, he warned that it would not require a lot of fraud to affect the outcome when a couple of percentage points could make all the difference in seat allocation. Popov provided the following example: 100,000 people is .8% of the vote -- that's only 500 polling stations, out of 34,000, tampering with 200 votes each, an easy feat.

#### Money Will Play a Role

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16. (C) The most direct way to influence an election is simply to buy votes. The June 17 mayoral election in Irpin demonstrated an easy way to use money to directly buy votes. CVU monitors there reported that students used cellphones to take pictures of their ballots cast in favor of the candidate backed by both Regions and Our Ukraine; once the photos were emailed out, the students received 50 UAH (\$10) in their cell phone accounts (ref A). The OSCE's Office of Democratic Institutions and Human Rights (ODIHR) reports various parties have been handing out gifts to voters, a long-standing trick in parliamentary elections here. The ODIHR media monitor and a journalist in Cherkasy (ref B) both mentioned to us the concern that in addition to legally-approved political advertising, the big parties were buying news articles and news time on television. In our trips out to the regions, we have been told that the amount of money Regions has available to put into its campaign is a major benefit. Former Donetsk allies Serhiy Taruta and Vitaliy Haiduk also told us that

Regions had a lot of money to spend. In Cherkasy, the CVU representative and a local journalist claimed that the Regions was using its money to pay factory managers and school administrators, who in turn are supposed to encourage their workers/students to vote for Regions.

Administrative Resources: Yushchenko's....

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¶7. (C) The use of government resources by high-ranking government officials to benefit their parties' campaigns is an issue that arises before every Ukrainian election although CVU Head Popov told the press that so far they are being used less this round. For example, Regions members, PACE, ODIHR, and some Ukrainian observers have criticized Yushchenko for directing many of his appointed governors to run the OU-PSD campaign in their oblasts. In theory, as party members, each governor has the right to be involved in the campaign, but many have been accused of using budget money and other office materials in support of OU-PSD's cause. An additional concern is that the presidentially-appointed governors and raion heads will put pressure on other officials, including at the polling station commissions (PSC) and district election commissions (DEC), to give advantages to OU-PSD.

¶8. (C) OU-PSD campaign manager and Presidential Secretariat Head Baloha reportedly has tight control over the election at the national and regional level and predicted replacements of several governors -- Deputy Secretariat Head Bondar was named acting governor of Dnipropetrovsk on September 3 -- could be an effort to increase control over governors' actions and pressure them to assist in the election. This strategy could backfire, however, given that many of the governors are politically unpopular, and sometimes resented as Kyivians sent into the oblast. We also heard from the OU party leader in Odesa that some OU regional headquarters resent Baloha's micromanaging (ref D).

¶9. (C) Without a doubt, Yushchenko has taken advantage of free advertising available to him as president. In announcing his social program, Yushchenko put up hundreds of billboards around the country and ran television ads outlining his vision -- an effort that began in July just prior to the kick-off of the election campaign season. All of these feature only the President and do not include any reference to Our Ukraine or any other party. They were all paid for by the state because they are considered to be public service announcements. Conveniently, Yushchenko's program ties in with what OU-PSD has put forward in its election platform and they were featured prominently in at the OU-PSD party congress.

KYIV 00002247 003 OF 005

Yanukovych's...

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¶10. (C) The Cabinet is also openly involved in the election process. ODIHR noted in a September 7 preelection briefing that all members of the Cabinet are traveling around the country campaigning while also working on official business. Justice Minister Lavrynovych has used his ministerial powers for political means, approving the falsified party stamp in the Pora controversy (ref E), and apparently helping to stir up an old controversy surrounding exiled Russian oligarch Boris Berezovskiy's provision of funds to Yushchenko's 2004 presidential campaign. Deputy PM Azarov's participation in the extraordinary Rada session (ref F) also showed the Cabinet's active support for Regions' campaign. PACE and ODIHR have criticized the politicization of the CEC, singling out Regions' use of its majority to delay registration of BYuT (ref G), tampering with Pora's membership in OU-PSD, and efforts to approve a form for home voting that does not require a medical reason for requesting the mobile ballot box.

...And Everyone Else's

11. (C) Officials on the local level probably will have the most influence on polling stations, giving all parties advantages in different regions. In the east, Regions dominates many local councils and mayors, while BYuT has strongholds across the center and parts of the west, as does OU. This also helps some of the smaller parties. For example, one political analyst told us that in certain areas in central Ukraine there are strongholds of the Viche party, whose leader Inna Bohoslovska is now number 4 on the Regions's list. We have also heard that this phenomenon could help the Socialists on voting day. In past elections, we have heard stories of appointed and elected officials sitting in polling stations on voting day, even though this is illegal.

#### Political projects

12. (C) Another trick used by big parties in past elections is the funding of marginal parties to confuse voters into giving their votes to parties with similar names that have no chance, such as the Communist Party (reformed) and the Ukrainian People's Bloc. Most of these parties are unlikely to have significant impact, but Popov agreed that they could attract votes on the margins. For example, he said that the Suprun Bloc -- a new version of the pro-Kuchma People's Democratic Party that had all but gone out of existence -- seems very well-funded and has been engaged in a heavy advertising campaign in Crimea, presumably to strip votes away from PSPU and Regions. KUCHMA could also be aimed at Regions. One political analyst, Vadim Karasyov, said that he believed someone in Regions was backing Lytvyn's Bloc, presumably to entice undecided centrists away from BYuT and OU-PSD.

#### Voting Day Abuses:

13. (C) One of the problems with the election may be disorganization and confusion, stemming in large part to changes to the parliamentary election law (PEL) and the shorter-than-normal campaign cycle. CEC Chairman Shapoval glumly noted to the Ambassador September 7 that one side changed the election law intentionally for a specific reason, a reference to the coalition-penned PEL put forward on June 1 and supported by 251 MPs, after an opposition-backed PEL was rejected. The amendments to the PEL have already raised questions and could cause problems that will enable parties to file court challenges after the election if they are unhappy with the outcome. These amendments could result in charges of disenfranchisement if people are improperly removed from voters' lists because of mistakes made by the Border Guards watching the border crossings; the use of mobile ballots and the ban on absentee ballots could also lead to people being denied the right to vote. On the fraud side, there could be some intraparty collusion at PSCs and DEC's, where this year due to a change in the election law, all the commissioners are from the five Rada factions -- in the past all parties had the right to nominate some commissioners -- removing the ability of small monitors to closely monitor the process.

#### Election Fraud...

KYIV 00002247 004 OF 005

14. (C) The most worrying area for actual fraud remains the mobile balloting box, now under looser requirements than in 2006 (ref C). Despite BYuT and OU-PSD efforts to require voters who want to vote at home to provide medical documentation -- not a legal requirement under the amended PEL -- the CEC majority has resisted this step. An appeals

court ordered the CEC to review the form voters must use to request the mobile ballot box, but the court did not instruct the CEC specifically to add a requirement for a doctor's note, just to reconsider the issue and provide instructions to the PSCs. CEC Chairman Shapoval said that the form will be approved by September 14, but it will not make the opposition happy. In Shapoval's view, the ability of the CEC to agree on a new form is constrained by the law, which does not ask for a medical certification for at-home voters. Observers are allowed to travel with mobile ballot boxes, but it is a time-intensive effort, and in most cases boxes travel at least part of the day unsupervised, which could allow extra ballots to be cast unseen. Both ODIHR and PACE have expressed concern that loose restrictions on mobile balloting could lead to falsification. Shapoval said another concern was that if too many people request the mobile ballot box, the PSCs will be overwhelmed. For example, it takes 20 minutes to bring the box to one voter -- if 200 people in one district request the box, the PSC would have to spend the whole day just collecting at-home ballots, which is unrealistic. Moreover, because the law removed the requirement for verification, someone could register people for the mobile box without their knowledge, causing them to be struck from the PSC lists -- if they show up to vote, they will be out of luck. A representative of IRI told us that their contacts claimed Regions officials were calling voters in the East and telling them they had already been signed up to vote at home.

¶15. (C) A number of political activists have also expressed great concern to us that parties may resort to getting voting results thrown out for certain polling stations both during the counting phase and later through court appeals. For example, the election law says that a PSC commission may invalidate the results at their station if damage is done to the box that makes it impossible to tell if the number of ballots cast is 20 percent more than the number of registered voters. A USAID election implementer told us that spilling ink into the box was one way to ruin a large number of ballots and have them thrown out. There were accusations in 2006 that the major parties used these tricks to invalidate polling station results in areas where smaller parties were close to the three-percent threshold -- such as PSPU, Kostenko-Plyushch Bloc, and Pora-PRP -- to keep their national numbers under three percent. Marginal parties could be targeted again to keep the total number of parties getting into the Rada down to four.

¶16. (C) The USAID implementer added that it was not necessary to have the complicity of a whole polling station commission to commit fraud or dirty tricks. Commissioners sit in pairs at different tables, with different voter lists and piles of ballots. Collusion between two would be enough to ruin ballots or play with the voter list, for example.

...Versus Election Flawed  
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¶17. (C) Problems with voter lists continues to be a source of concern. Although the Rada passed a progressive law in the spring calling for a national voter registry, there has not been enough time to establish this registry. Therefore, DEC's and PSCs are still primarily responsible for ensuring that their lists are accurate; accidental misspellings and other minor errors could prevent voters from being allowed to vote. Moreover, the PEL amendment calling on the Border Guards to enter into the voter lists system the names of people out of the country three days before the election has created confusion and uneven implementation. Voters leaving the country are supposed to submit a form to the Border Guards and a second one when they return, but not all border guard points are computerized, according to one USAID implementer. Shapoval told the Ambassador that the CEC and Border Guards were having trouble figuring out how to make the system work; personally, he was hoping the Constitutional Court would strike this provision from the law, as President Yushchenko had requested. ODIHR said that their long-term monitors in Sumy had been denied access to border crossing points. Popov



said that this issue could result in another 200,000 losing the right to vote; Shapoval also believed people would be unfairly removed from voter lists.

¶18. (C) In addition, the new ban on absentee ballots may

KYIV 00002247 005 OF 005

limit parties from finding enough observers. Parties are a major source of domestic observation, but in the past they bussed observers into regions where they did not have a natural base of support. It may be harder to find people willing to travel, now that they will be unable to vote. For example, the orange team told IRI that they will send 3,000 observers to Donetsk and 1,500 to Luhansk, depriving those 4,500 people of the right to vote. Coalition parties could face the same problem in sending observers west. ODIHR also expressed concern that the lack of an absentee ballot will disenfranchise many university students.

Parties Will Provide Some Checks, but not Enough  
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¶19. (C) All analysts we have spoken with thought that, to some degree, the mutual suspicion and competition between OU-PSD and BYuT will force them to serve as checks on each other, limiting the amount of manipulation in the West and parts of the Center. Political observers have been more concerned about the East, where they thought there were areas, especially outside major cities, where Regions is in full control and can act with impunity. Popov said that it was at the local level where fraud, if it happens, will take place. Therefore what matters is who runs city and raion councils and administrations not what happens in Kyiv.

Court Appeals Can Also Muddy Waters  
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¶20. (C) Everyone we have spoken with -- from Regions oligarch Akhmetov to the political analysts to ODIHR -- told us that the numerous court appeals likely to be filed before and after the vote will throw up roadblocks, and slow the vote count and seating of the new Rada. A large number of cases filed before the election could clog the system and block important cases from being heard in a timely fashion. According to an ODIHR legal analyst, 39 election-related cases have already been filed since the campaign began on August 1. Moreover, all agree that there will certainly be a large number of court cases filed in October to contest the election results. Akhmetov told the Ambassador September 4 that BYuT in particular will use the judicial system to have results thrown out in pro-Regions areas.

¶21. (C) According to CVU Head Popov, he has talked to the heads of the legal departments for Regions (Yuriy Miroshnychenko) and OU-PSD (Mykola Katerynychuk) -- and both were already preparing legal actions for various election scenarios. Popov and Ihor Kohut, head of the Agency for Legislative Initiatives NGO, were both worried that a worst case scenario was that a large number of court battles would result in the elections being annulled and no parliament being seated. They also warned that 151 MP-elects could object to the elections and refuse to take their seats, causing a repeat of the current situation. Either way, Ukraine could see more repeat elections or a Yushchenko presidency and caretaker Yanukovych government acting with no parliament. Their best case scenario was that it would take a couple of months to get through post-elections objections and negotiations before a new government was formed and seated.

¶22. (C) Also of concern is the common practice among all major parties here of court buying -- everyone may be looking for judges to provide favorable rulings. Popov told us that Baloha holds sway over the Constitutional Court, which could play a role in some decisions, such as Yushchenko's appeal of the Border Guard provision in the PEL. Popov also related a

rumor to us that Baloha had approached one of the district administrative courts with instructions about how to rule on certain issues, only to be told that he was too late; Regions had already been there with money in hand, and he should find another court. (Comment. Apocryphal or not, this anecdote underscores the distrust all sides view the judicial branch with and the likelihood that multiple, contradictory rulings will crop up after the election, confusing the outcome. End comment.)

¶23. (U) Visit Embassy Kyiv's classified website:  
[www.state.sgov.gov/p/eur/kiev](http://www.state.sgov.gov/p/eur/kiev).  
Taylor